

HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE

W.P. NO.19758 OF 1994

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Between:

The General Manager,
Ramagundam Area-1,
Singareni Collieries Co., Ltd.,
Godavarikhani,
District Karimnagar.

.....Petitioner

AND

The Industrial Tribunal-1,
Chandra Vihar, M.J.Road,
Hyderabad represented by its
Presiding Officer and another.

.....Respondents

::ORDER::

Counsel for the Petitioner : Ms.Uma Devi for Sri

K.Srinivasa Murthy

Counsel for Respondent No.2 : Sri G.Ravi Mohan

Dated 12/9/2006

The mandatory character of the provisions contained in Section 33(2)(b) of the Industrial Disputes Act, 1947 (for short 'the Act') was highlighted almost 40 years ago in **Tata Iron & Steel Co., v. Modak**^[1] and it was held that non-compliance of the conditions enshrined in that section constitutes a sufficient ground for refusing to approve the action taken by the employer to dismiss the employee. The same view has been reiterated by the Constitution Bench of the Supreme Court in **Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd., v. Ram Gopal Sharma**^[2].

I have made a mention of the above noted judgments of the Supreme Court because the only issue which arises for determination in this petition is whether Presiding Officer, Industrial Tribunal-1, Hyderabad committed a jurisdictional error by refusing to approve the action taken by the petitioner to dismiss respondent No.2 - Ramagiri Odelu (hereinafter described as 'the workman') from the services of Singareni Collieries Company Limited (for short 'the Company').

Brief Facts

While he was working as Coal Filler at GDK No.6A/B Incline of the company, a domestic enquiry was held against the workman on the charge of remaining absent with effect from 1.1.1991. The Enquiry Officer held that the charge framed against the workman

has been proved. The competent authority accepted the enquiry report and dismissed the workman from service with effect from 21.7.1992. Simultaneously, cheque bearing No.CC/40679697 dated 21-7-1992 drawn on the State Bank of Hyderabad for a sum of Rs.1954.42 representing his one month's wages was tendered to the workman.

Since the proceedings relating to Industrial Dispute No.12 of 1989 were pending before Industrial Tribunal (Central), Hyderabad, the management of the Company filed an application under Section 33(2)(b) for approval of its action. In unmarked paragraph 4 of the application, it was categorically averred that cheque No.CC/40679697 dated 21.7.1992 drawn on the State Bank of Hyderabad has been tendered to the workman in lieu of one month's wages.

In the counter filed by him, the workman questioned the fairness of the enquiry held against him and pleaded that approval should be refused because the action taken by the management of the company was wholly unjustified. The workman did not dispute receipt of cheque but pleaded that the same did not represent full salary for one month. This is evinced from paragraph 2 of the counter filed by the workman which is reproduced below:

"2. It is submitted that the application as filed by the management is not in accordance with Section 33(2) (b) of the Industrial Disputes Act. The dismissal order, payment of wages of one month and application for approval of the action taken by the employer should be part of the same transaction. The full salary for one month was not paid along with order of dismissal and simultaneous application has not been made. Therefore, on this ground alone the application is liable to be rejected."

After considering the rival pleadings and evidence produced

by the parties, the learned Presiding Officer of the Tribunal vide his order dated 15.9.1994 held that the domestic enquiry against the workman was fair and proper and that the finding recorded by the enquiry officer that the charge of absence from duty has been proved against the workman does not suffer from any infirmity. He then considered the question whether the mandatory conditions embodied in Section 33(2)(b) have been complied with and ruled that the management of the company has failed to prove the tender of one month's wages. In paragraph 7 of the order dated 15.9.1994 passed by it, which is under challenge, the learned Presiding Officer took cognizance of the assertion contained in the application filed by the management of the company that Cheque No.40679697 dated 21.7.1992 drawn on the State Bank of Hyderabad was tendered to the workman but discarded the same by saying that the amount has not been specified in the cheque. For the sake of reference, paragraph 7 of the impugned order is reproduced below:

“7. In the petition of the petitioner-management it is mentioned that one month wages have been tendered to Sri Ramagiri Odelu along with dismissal order vide Cheque No.CC/40679697 dated 21-7-1992 drawn on State Bank of Hyderabad, at Singareni Collieries Co.Ltd., Branch Godavarikhani. It is pertinent to note that the above cheque dated 21-7-1992 has been tendered to the respondent, but in this particular cheque, amount of one month wages is not shown and it is stated that dismissal order was sent along with the cheque. Generally in money transaction, the cheque number, the date and the amount will be shown. But in this particular cheque, amount is not shown. When once the amount is not shown in the particular cheque, it means that one month's wages have not been tendered and on this particular technical ground, the petition under Section 33(2)(b) falls to the ground. Hence, I find that in view of the above said defects due to non-mentioning of amount

in the cheque that was sent to the respondent, the provisions of the proviso to Section 33(2)(b) of the I.D. Act are not complied and that therefore the petitioner management is not entitled for approval and the petition is liable to be dismissed.”

Ms.Uma Devi, learned counsel for the petitioner invited my attention to the contents of the application, the counter affidavit filed on behalf of the workman and xerox copy of cheque bearing No. CC/40679697 to show that the amount of Rs.1,954.52 had been tendered to the workman along with the order terminating his services and submitted that the finding recorded by the learned Presiding Officer of the Tribunal should be declared as perverse. She emphasized that failure of the workman to controvert the assertion contained in the application filed on behalf of the management of the company should have been treated by the Tribunal as sufficient for recording a finding that one month's wages had been tendered to the workman along with the order of dismissal.

Learned counsel for the workman supported the order under challenge and argued that mere mentioning of the number and date of the cheque is not sufficient for proving that the employer had tendered one month's wages to the workman along with the order of dismissal.

I have considered the respective arguments and carefully scanned the record. In my opinion, the finding recorded by the learned Presiding Officer of the Tribunal on the issue of non-compliance of the mandatory condition embodied in Section 33(2) (b) is perverse and the order under challenge is liable to be set aside. At the cost of repetition, I deem it proper to mention that in the application filed by it, the management of the company had categorically averred that the amount of one month's wages was

tendered to the workman vide Cheque No.CC/40679697. In the counter-affidavit filed by him, the workman did not dispute this fact. Rather, in paragraph 2 of the counter, he stated that full salary of one month has not been paid. This implies that the workman had received the cheque tendered by the management of the company. Therefore, the finding recorded by the learned Presiding Officer of the Tribunal that amount had not been mentioned in the cheque cannot but be declared as perverse. If the workman had controverted the assertion of the management that the amount of one month's wages was tendered through cheque No.CC/40679697 dated 21.7.1992, then the burden would have been on the management to adduce evidence to show that the amount of one month's wages had, in fact, been tendered. However, the fact of the matter is that the workman did not dispute the receipt of cheque No. CC/ 40679697 dated 21.7.1992. Therefore, it was for him to establish that the said cheque did not represent one month's wages payable to him in terms of Section 33(2)(b) of the Act. The record of the case, however, shows that the workman did not adduce any evidence to prove that he had not been paid one month's full salary at the time of dismissal from service.

In view of the above discussion, it must be held that the finding recorded by the learned Presiding Officer of the Tribunal on the issue of non-compliance of Section 33(2)(b) of the Act is perverse and the order under challenge is liable to be declared as vitiated by an error of law apparent on the face of the record.

In the result, the writ petition is allowed. Order dated 15.9.1994 passed by the Industrial Tribunal-1, Hyderabad is quashed. As a consequence, the application filed by the management of the company under Section 33(2)(b) shall stand allowed and approval as prayed for will be deemed to have been granted.

G.S.SINGHVI, CJ

Dt.12.9.2006

msv.

[\[1\]](#) AIR 1966 SC 380

[\[2\]](#) AIR 2002 SC 643